

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE III

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SC03-1846

**THE FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION'S RESPONSE TO JOHN K. RENKE, II'S OBJECTION
TO SUBPOENA DUCES TECUM AND MOTION FOR PROTECTIVE
ORDER AND MEMORANDUM OF LAW**

The Florida Judicial Qualifications Commission (the "JQC"), hereby responds to John K. Renke, II's Objection to Subpoena Duces Tecum and Motion for Protective Order and Memorandum of Law (hereinafter "Motion for Protective Order"), as follows.

1. This is a disciplinary proceeding brought by the JQC against Judge John Renke, III ("Judge Renke") a sitting circuit court judge in Pasco County, Florida. Judge Renke was elected in 2002.

2. John K. Renke, II is Judge Renke's father and a Florida lawyer for many years. John K. Renke, II was also Judge Renke's campaign manager in 2002 and his employer from his graduation from law school in 1995 until he went on the bench in January 2003.

3. John K. Renke, II objected to the subpoena duces tecum which required him to appear and produce documents on May 23, 2005 in New Port Richey, Florida. A true and correct copy of the subpoena duces tecum is

attached hereto as Exhibit A.¹

4. The subpoena duces tecum sought production of documents responsive to the following requests:

1. John K. Renke, II's Federal Income Tax Returns and all schedules or attachments thereto for 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002.

2. All billing slips, time records or other recorded time or billing compilations for work performed by John Renke, III in 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002.

3. All billing slips, time records or other recorded time or billing compilations for work performed by Thomas Gurran in 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002.

4. All billing slips, time records or other recorded time or billing compilations for work performed by John K. Renke, II in 1995, 1996, 1997, 1999, 2000, 2001 and 2002.

5. All documents reflecting, referring or relating to positions held with, meetings you attended or in which you participated and the raising or expenditure of funds by, the Pasco County Republican Party or the Pasco County Republican Executive Committee in 2001 and 2002.

6. All documents reflecting, referring or relating to any transactions, dealings or communications involving you, your relatives or associates and the Republican Party of Pasco, the Pasco County Republican Executive Committee or any persons acting for or on behalf of these entities, the other Republican candidates for judge in the 2002 or any other entities or individuals acting for or on their behalf.

5. John K. Renke, II has objected to these requests and seeks a protective order "that the discovery requested in the aforementioned subpoena

¹ This is a subsequent subpoena duces tecum with a return a date of May 23, 2005 and is not the same as the subpoena duces tecum served on March 8, 2005 which gave rise to the JQC's pending Motion to Enforce Subpoena Duces Tecum.

not be had.” Motion for Protective Order, Wherefore Clause.²

**THE ISSUES PRESENTED BY THE MOTION
FOR PROTECTIVE ORDER HAVE BEEN RESOLVED BY AGREEMENT
EXCEPT FOR THE FEDERAL INCOME TAX RETURNS**

6. John K. Renke, II and special counsel resolved all of the issues raised by the Motion for Protective Order on the record at deposition on May 23, 2005, with the exception of request no. 1 regarding John K. Renke's Federal Income Tax Returns. Special counsel agreed to limit request nos. 2, 3 and 4 to matters from which funds were derived that were used to pay Judge Renke's total compensation of \$166,736.50, including extraordinary, non-recurring, gross compensation in excess of \$141,000, in 2002. Both Renkes have testified that the \$141,000 came from Judge Renke's share of contingency fee cases which settled in 2002. It is undisputed that Judge Renke then used these funds to finance his judicial campaign, loaning the campaign a total of \$98,500 or roughly 90% of the total funds raised.

7. After special counsel thus narrowed request nos. 2, 3 and 4, John K. Renke agreed on the record to produce documents responsive thereto within 10 days, that is, on or before June 3, 2005. Furthermore, John K. Renke, II testified under oath that he had no documents responsive to requests 5 or 6.

8. Accordingly, any dispute regarding 5 of the 6 (2, 3, 4, 5 and 6) requests has been resolved, and only request no. 1 (John K. Renke, II's Federal

² There do not appear to be any page numbers on the Motion for Protective Order and page 2 (and possibly page 3) is missing entirely from the copy served on special counsel.

Income Tax Returns) remains at issue.

9. Moreover, by voluntarily appearing and participating in the deposition on May 23, 2005, and reaching an agreement with special counsel to resolve any dispute with respect to five of the six requests, John K. Renke, II has waived and is now estopped to assert any of the procedural objections set forth in the Motion for Protective Order, e.g., personal service, 30 days notice and etc.

10. Thus, only the substantive propriety of requiring John K. Renke, II to produce his Federal Income Tax Returns remains.

**JOHN K. RENKE, II'S FEDERAL INCOME
TAX RETURNS ARE ESSENTIAL TO ADJUDICATION OF AMENDED
FORMAL CHARGES 9 AND 10**

11. Paragraph 9 of the Amended Formal Charges states:

During the campaign in violation of Canon 1, Canon 2A and Canon 7A(3)(a) and §§ 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes, your campaign knowingly and purposefully accepted a series of "loans" totaling \$95,800 purportedly made by you to the campaign which were reported as such, but in fact these monies, in whole or in substantial part, were not your own legitimately earned funds but were in truth contributions to your campaign from John Renke, II (or his law firm) far in excess of the \$500 per person limitation on such contributions imposed by controlling law.

Amended Formal Charge 10 alleges cumulative misconduct, including Amended Formal Charge 9, demonstrating present unfitness to hold judicial office.

12. It is undisputed that: (a) John K. Renke, II was Judge Renke's employer when he graduated from law school in 1995 until he went on the circuit

court bench in January 2003; (b) John K. Renke, II's law firm is not a separate entity, thus all the firm income, deductions and finances are reported on his individual Federal Income Tax Returns; and (c) John K. Renke, II was the exclusive source of the funds paid to Judge Renke in 2002 which he used to finance his 2002 campaign.

13. In light of Amended Formal Charges 9 and 10 and the foregoing undisputed facts, the relevance of the Federal Income Tax Returns (and the JQC's compelling need therefor) is evident. For example, if Judge Renke was paid \$161,736.50 in 2002, including \$145,133.50 in extraordinary income as his share of contingency fee settlements, but the entire law firm's income did not exceed \$200,000, then Judge Renke received 70% - 80% of all firm income in 2002. If so, it is far more probable that "these monies, in whole or substantial part," were not Judge Renke's "own legitimately earned funds" Notice of Amended Formal Charges, ¶ 9.

14. Similarly, if the firm's income was \$500,000 or \$600,000 in 2002, it makes it less probable that the money received was not Judge Renke's "own legitimately earned funds." Id. Under either scenario, the relevance of the tax returns is manifest. Furthermore, accepting substantially redacted tax returns or other selective information released by John K. Renke, II is insufficient. Absent true and correct copies of the tax returns, it will simply be impossible to ascertain the true facts regarding income, expenditures, the law firm's deductions, or

determine whether the tax treatment is consistent (or inconsistent) with the positions taken by Judge Renke and his father in this proceeding.

15. John K. Renke, II contends that the JQC cannot satisfy Thomas v. Smith, 882 So. 2d 1037 (Fla. 2d DCA 2004), to overcome his reasonable expectation of privacy in his tax returns. Motion for Protective Order, ¶¶ 6(a)-(c), 7 and 8. Yet, the JQC does indeed have: (a) a “compelling [state] interest warranting” production of the tax returns; and (b) there is no other less “intrusive means” by which the JQC can determine the truth. Thomas, 882 at 1044.

16. Since the tax returns are directly relevant to Amended Formal Charges 9 and 10 as explained in detail above, there is obviously a “compelling state interest” in ascertaining the true facts directly relevant to those charges and thus Judge Renke’s present fitness to hold judicial office.

17. There can be no more compelling state interest than assuring the fitness of Florida’s judiciary. “There can hardly be a higher governmental interest than a State’s interest in the integrity of its judiciary.” Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 848 (1978) (Stewart, J. concurring); Accord Cox v. Louisiana, 379 U.S. 559, 565 (1965). Florida’s overriding interest in the appearance and more importantly the reality of a fit, fair, impartial, independent judiciary is beyond dispute. See Mistretta v. U.S., 488 U.S. 361, 407 (1989); Mayberry v. Pennsylvania, 400 U.S. 455, 469 (1971) (Harlan, J., concurring).

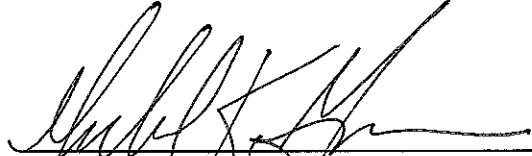
18. There is also no other less “intrusive means” than production of the tax returns by John K. Renke, II. He is the only person with possession of those documents, so there is no other source from which the information can be obtained.³ Motion for Protective Order, ¶ 8.

19. The JQC does not dispute that John K. Renke, II has a rebuttable expectation of privacy in his tax returns (which is overcome by the JQC’s compelling state interest and by the obvious need for the information), but John K. Renke, II’s own conduct has greatly lessened the weight of any privacy considerations here. It was John K. Renke, II who did not incorporate his law firm and thus combined all of his professional and personal business into a single annual tax return. John K. Renke, II well knew that by doing so he ran the risk that the combined returns could be disclosed in subsequent litigation involving himself, the law firm or his associates. If he so strongly sought to protect purely personal information, he would have separated the law firm’s finances (and tax reporting) from his own. It was reasonably foreseeable that disclosure of the combined tax returns could well be legitimately sought and obtained in litigation or other proceedings arising from the law firm’s operations or the attorneys’ conduct e.g. Bar and JQC proceedings, malpractice litigation, etc.

³ The tax returns can only be obtained from John K. Renke, II or the Internal Revenue Service, but of course under federal law, the Service will not release tax returns without prior written consent of the taxpayer, in this case John K. Renke, II.

CONCLUSION

20. For all of the foregoing reasons, the JQC respectfully submits that John K. Renke, II's Objections should be overruled, the Motion for Protective Order should be denied, and John K. Renke, II should be ordered to produce the tax returns pursuant to the subpoena duces tecum.

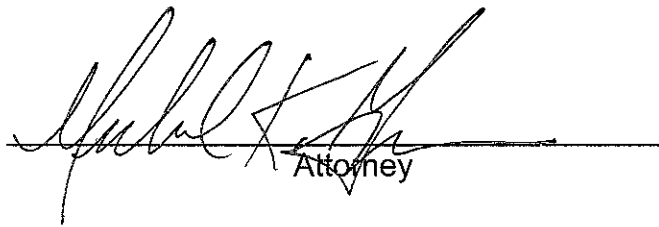


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of has been furnished by U.S. Mail to **Scott K. Tozian, Esquire**, Smith & Tozian, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602-4163 and **John K. Renke, II, Esquire**, Law Offices of John K. Renke, II, 7637 Little Road, New Port Richey, Florida 34654 on this 31st day of May, 2005.



Attorney

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE III

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SC03-1846

SUBPOENA DUCES TECUM FOR DEPOSITION

THE STATE OF FLORIDA:

TO: John K. Renke, II
Law Offices of John K. Renke, II
7637 Little Road
New Port Richey, Florida 34654

YOU ARE HEREBY COMMANDED to appear before Judy Moukakis & Associates, a commissioner authorized by law to take depositions, at the **offices of Judy Moukakis & Associates, (Court Reporters Annex), 7530 Little Road, New Port Richey, Florida 34654** on **May 23, 2005 at 1:00 p.m.** and to have with you at that time and place the documents responsive to the requests set forth in Exhibit A attached hereto.

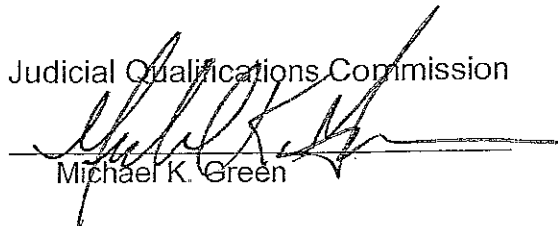
If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or
- (3) object to this subpoena,

you may be in contempt of court. Unless excused from this subpoena, you shall respond to this subpoena as directed.

DATED this 4TH day of May 2005.

Judicial Qualifications Commission



Michael K. Green

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AMERICAN DISABILITIES ACT (ADA)

If you are a person with a disability who needs a reasonable accommodation in order to participate in this proceeding, you are entitled at no cost to you, to the provision of certain assistance. Please contact Trenam Kemker 2700 Bank of America Plaza, 101 East Kennedy Boulevard, Tampa, Florida 33602, (813) 223-7474, within two (2) working days of your receipt of this subpoena; if you are hearing or voice impaired call 1-800-955-8771

EXHIBIT A

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